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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,082	12/28/2000	Anthony N. Sarra	10559/316001/P9677	3510
21552	7590	11/05/2004		
MADSON & METCALF GATEWAY TOWER WEST SUITE 900 15 WEST SOUTH TEMPLE SALT LAKE CITY, UT 84101			EXAMINER LE, DIEU MINH T	
			ART UNIT 2114	PAPER NUMBER

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/753,082

Applicant(s)

SARRA ET AL.

Examiner

Dieu-Minh Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-14 and 17-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-14, 17-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) ~
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is response to the RCE filed on 08/16/04 in application 09/753,082.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 4-14, 17-30 are rejected under 35 U.S.C. 102(e) as being anticipate over Snow (U.S. Patent US 6,640,317).

As per claim 1:

Snow explicitly teaches:

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- A method comprising:
 - continuously monitoring system calls made by an application [col. 9, line 59 through col. 10, line 36]:
 - detecting a failure in a system call made by the application [col. 1, lines 28-31 and col. 2, lines 44-50];
 - in response to the detecting of the failure in the system call, initiating a repair mechanism to repair the application [col. 1, lines 28-31 and col. 2, lines 44-50].

As per claim 4:

Snow further teaches:

- configuring the device to perform the monitoring from a location remote from the device [col. 6, lines 25-30, col. 11, lines 1-10, col. 11, lines 50-54].

As per claim 5:

Snow further teaches:

- repairing the application with the repair mechanism [col. 1, lines 28-31 and col. 2, lines 44-50].

As per claim 6:

Snow further teaches:

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- restarting the application after the repair mechanism repairs the application (i.e., loading initial state and restarting every time loading or reloading application states, system shut down for uploading changes and restart) [fig. 7, col. 3, lines 46-49].

As per claim 7:

Snow further teaches:

- a user of the device can determine the repair mechanism [col. 1, lines 28-31 and col. 2, lines 44-50].

As per claim 8:

Snow further teaches:

- a user of the device can initiate the repair mechanism [col. 1, lines 28-31 and col. 2, lines 44-50].

As per claim 9:

Snow further teaches:

- searching a collection of data including a plurality of repair mechanisms and a plurality of applications associated with each of the plurality of repair mechanisms for a repair mechanism that is configured to repair the application (i.e., collection of application working

definitions, checksum, files size, runtime environment, etc...) [fig. 4A-b and fig. 6, col. 9, lines 28-45 and col. 10, lines 7-19].

As per claim 10:

Snow further teaches:

- notifying a location remote from the device whether the repair mechanism successfully repaired the application [col. 9, lines 59 through col. 10. lines 7 and col. 10, lines 27-31].

As per claim 11:

Snow further teaches:

- recording the detected failure in a collection of data at a location remote from the device [col. 10, lines 33-34 and lines 46-47].

As per claim 12:

Snow further teaches:

- configuring a collection of data at a location remote from the device to include a plurality of repair mechanisms and a plurality of applications, each of the plurality of application associated with a repair mechanisms in the

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plurality of repair mechanisms [fig. 4A-b and fig. 6, col. 9, lines 28-45 and col. 10, lines 7-19 and lines 40-50].

As per claim 13:

Snow further teaches:

- transmitting the collection of data to the device [fig. 7, col. 10, lines 51-60].

This is clearly shown that Snow's teaching capabilities are corresponding to Applicant's invention.

As per claims 14, 17-22:

These claims are the same as per claims 1, 4-13. The only minor different is that these claims are directed to a **machine-readable medium** instead of the method for detecting and repairing a failure as described in claims 1, 4-13. However, a **machine-readable medium** is a necessary item for such communication devices including remote device or client-server [Snow, col. 11, lines 50-54] networking system, more specifically, data communication or transmission between client-server system. Since the data transmission or client-server obviously needs a means for instruction or code means resided within the machine-readable medium for performing the data

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storing, receiving, detecting, tracking, monitoring, repairing, restarting, and transmitting operation capabilities. Therefore, these claims are also rejected under the same rationale applied against claims 1, 4-13.

As per claims 23-30:

These claims are the same as per claims 1, 4-13. The only minor different is that these claims are directed to a system comprising a first, second, and third devices configured to run, track failure of application, etc.. instead of a method for monitoring, detecting and repairing application failure. However, Snow explicitly teaches a client/server environment therein to continuously monitoring, detecting, and correcting/repairing application failures (i.e., client, server, communication device via Internet, etc... as being first, second, third, etc... devices used to supporting application failure detection and correction); Therefore, these claims are also rejected under the same rationale applied against claims 1, 4-13.

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Conclusion


4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5. A shortened statutory period for response to this action is set to expired THREE (3) months, ZERO days from the date of this letter. Failure to respond within the period for response will cause the application to be abandoned. 35 U.S.C. 133.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (571) 272-3660. The examiner can normally be reached on Monday - Thursday from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The Tech Center 2100 phone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DIEU-MINH THAI LE
PRIMARY EXAMINER
ART UNIT 2114

DML

10/27/04